

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,	
Plaintiff,	CR-88-92-GF-BMM
vs.	ORDER
ROBERT D. RED ELK,	
Defendant.	

By Order dated December 12, 1989, the Court previously committed Mr. Red Elk to the custody of the Attorney General, pursuant to 18 U.S.C. § 4243(e), until his conditional release under a prescribed regimen of care and treatment would not create a substantial risk of bodily injury to another person or serious damage to the property of another.

The Warden at the Federal Medical Center in Butner, North Carolina, has certified to the Court, pursuant to 18 U.S.C. § 4243(f), that Mr. Red Elk has recovered from his mental disease or defect to such an extent that his

conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to the property of another, if placed on the conditions outlined below.

The Court granted Mr. Red Elk's request for conditional release on September 18, 2017. (Doc. 89.) Mr. Red Elk violated multiple terms of his conditional release. (Doc. 70.) The Court issued a warrant for Mr. Red Elk's arrest on September 1, 2022. (Doc. 91.) Mr. Red Elk was arrested in Wolf Point, Montana on September 22, 2022. (Doc. 92.)

The Court held a hearing on October 4, 2022, regarding Mr. Red Elk's revocation of supervised release. (Doc. 97.) The Court heard unrefuted testimony that Mr. Red Elk travelled from Rapid City, South Dakota to Wolf Point, Montana, and that Mr. Red Elk was arrested in Wolf Point, Montana.

Based on the unrefuted evidence presented to the Court, the Court revokes Mr. Red Elk's supervised release. The Court orders Mr. Red Elk be expeditiously transported to a group home in Rapid City, South Dakota, as described below in light of Mr. Red Elk's mental condition.

IT IS THEREFORE ORDERED, pursuant to 18 U.S.C. § 4243(f)(2), that Mr. Red Elk be conditionally released under the following specific

conditions and regimen of care:

1. Mr. Red Elk will remain in custody until he can be transported to Behavior Management Systems located at 111 North Street in Rapid City, Pennington County, South Dakota 57701.
2. Mr. Red Elk shall reside at Behavior Management Systems located at 111 North Street in Rapid City, Pennington County, South Dakota 57701.
3. Mr. Red Elk will report to the United States Probation Office located at 515 Ninth Street, Room 203 in Rapid City, South Dakota. The telephone number is (605) 399-5920. Mr. Red Elk shall remain under the supervision of the U.S. Probation Office for the District of South Dakota and shall comply with all of the standard conditions of supervision and any other conditions adopted by the U.S. Probation Office, as well as the specific conditions set forth herein.
4. Mr. Red Elk shall maintain active participation in a regimen of outpatient mental health care and drug and alcohol treatment as recommended by Behavior Management Systems and approved by the United States Probation Officer.

5. Mr. Red Elk shall register as a sex offender upon his release in accordance with applicable laws and attend sex offenders' treatment as recommended by Behavior Management Systems and approved by the United States Probation Office.

6. Mr. Red Elk shall continue to take all medications as prescribed for him by the medical provider.

7. It shall be the duty and responsibility of the medical provider to promptly notify the United States Probation Office of any changes in the prescribed regimen of medical or psychiatric care.

Specifically, any failure by Mr. Red Elk to cooperate or comply with the medication(s) or other requirements of the conditions listed shall result in revocation of his conditional release.

8. Mr. Red Elk shall waive his rights to confidentiality regarding his mental health treatment in order to allow sharing of information with the supervising United States Probation Officer, U.S. Attorney's Office, and the Federal Bureau of Prison officials, who will monitor Mr. Red Elk for continued appropriateness for community placement.

9. Mr. Red Elk shall abstain from the use of alcohol, illegal

narcotic substances, or drugs. He may be required to submit to testing for use of drugs and alcohol at the direction of the United States Probation Officer. He shall not frequent places where alcohol or illegal drugs are known to be the primary place of possession, manufacture, or distribution. If Mr. Red Elk tests positive for alcohol or illegal drug use, he may be taken into custody and returned to court for further action.

10. As directed by the probation officer, Mr. Red Elk shall notify third parties of risk that may be occasioned by his criminal record, personal history or characteristics, and shall permit the probation officer to make such notifications and confirm his compliance with such notification requirement.

11. Mr. Red Elk shall not have in his possession at any time actual or imitation firearms, destructive devices, or other deadly weapons. He shall submit to a search without a warrant at the request of a probation officer or any law enforcement officer of his person or property, including vehicle or premises, for the purpose of determining compliance with this condition.

12. Mr. Red Elk shall be restricted from travel outside of

the local area except with prior approval of the United States

Probation Officer.

13. Mr. Red Elk shall not incur new credit charges or open additional lines of credit without the approval of the probation office. He shall provide the probation officer with access to any requested financial information.

14. Mr. Red Elk shall not commit a federal, state, or local crime, and shall immediately notify his probation officer if he is arrested or questioned by any law enforcement officer. He shall not associate with any persons engaged in criminal activity or associate with any person convicted of a felony unless granted permission by his probation officer.

15. Mr. Red Elk shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons. Please Note: Due to Mr. Red Elk's mental health issues, he is unable to work. A records check with the Social Security Administration noted that Mr. Red Elk's Social Security benefits are suspended and will be reinstated upon his release to the community. Additionally, Mr. Red Elk receives money from the Bureau of Indian Affairs.

16. Upon the recommendation of the medical provider or the U.S. Probation Officer, Mr. Red Elk shall voluntarily admit himself into a hospital for treatment. If he refuses, involuntary state civil commitment procedures should be pursued. A local or state hospital should be utilized if possible. If local or state facilities are unable to ensure the safety of others, the U.S. Probation Officer shall contact the Court for further instructions regarding Mr. Red Elk's possible return to federal custody (preferably FMC Butner, North Carolina).

17. It shall be the duty and responsibility of the United States Probation Office to notify and provide adequate documentation to the United States Attorney's Office, the Federal Public Defender's Office for Montana, and the Complex Warden of Federal Medical Center, FCC, Butner, North Carolina, upon a request to modify or terminate the conditions of release.

18. Annual reports shall be filed by the U.S. Probation Office with the Court, with copies to the U.S. Attorney's Office, the Federal Defenders Office of Montana, and the United States District Court for the District of Montana and FCC Butner, North Carolina.

19. Upon receipt and verification of a Court Order for Conditional Release, the Bureau of Prisons shall notify the appropriate persons, finalize release paperwork, make transportation arrangements, arrange an initial appointment for mental health aftercare and contact the assigned probation officer prior to the actual date and time of release from the Bureau of Prisons. The U.S. Probation Office will notify the Court of the actual release date. The Bureau of Prisons shall release Mr. Red Elk after all release arrangements are satisfactory and complete.

Mr. Red Elk's failure to adhere to any of the above conditions of his release may result in his return to custody to be brought before this Court for review of his suitability for conditional release. *See* 18 U.S.C. § 4243(g).

It shall be the duty and responsibility of the treatment provider to promptly notify the U.S. Probation Officer of any changes in the prescribed regimen of medical or psychiatric care, including any failure by Mr. Red Elk to comply with medication or cooperate with the other requirements of the conditions listed above.

The treatment provider or U.S. Probation Officer may at any time



recommend modification or elimination of the regimen of medical, psychiatric, or psychological care or treatment, upon certification to this Court that to do so would not create a substantial risk of bodily injury to another person or serious damage to property of another. If a request to modify or terminate the conditions of release is made, the party so requesting shall submit a motion to this Court, with adequate documentation supporting the request, and provide copies to the U.S. Probation Officer, the Office of the United States Attorney, Mr. Red Elk's counsel, and the Warden of FMC Butner.

Pursuant to 18 U.S.C. § 4247(e), the U.S. Probation Officer shall file annual reports with the Court, and provide copies to the United States Attorney, Mr. Red Elk's counsel, and the Warden of FMC Butner.

Upon receipt and verification of an Order of Conditional Release and prior to the actual date and time of release, the Bureau of Prisons shall notify the appropriate persons to schedule an arrival date, finalize the release paperwork, make transportation arrangements, arrange the initial appointment for mental health aftercare, and contact the assigned U.S. Probation Officer. The Bureau of Prisons shall release Mr. Red Elk after all release arrangements are satisfactory and complete.

DATED this 5th day of October, 2022.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

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Brian Morris, Chief District Judge  
United States District Court